

A person is seen from behind, sitting in a canoe on a calm body of water. The person is holding a paddle. The water is very still, creating a clear reflection of the person and the canoe. In the background, there is a dense line of trees, and the entire scene is shrouded in a thick mist or fog, giving it a serene and quiet atmosphere.

# In Water We Trust

DNR works to fulfill its mission of helping people use the waterfront while protecting Wisconsin's public waters for all.  
How well did we do in 2004?

## The 2004 Annual Report

### Inside...

The new permit system set-up  
What's changed? What hasn't?  
How fast can you get a decision  
For the do-it-yourselfer  
What's ahead in 2005



2004 was a year of transition in managing Wisconsin's public waters, but landowners continued to receive the decisions they needed for waterfront and wetland projects fast – in less time than in 2003 and half the time as just five years earlier. In 2004, landowners, consultants and staff alike learned the new standards and processes of Act 118, the Regulatory Reform Act of 2004 and the associated 12 chapters of new administrative rules. At the same time, DNR staff met the state's constitutional responsibility to protect public waters for the benefit of all Wisconsin citizens. Protecting water resources is key to Wisconsin's economy, environment, recreation, natural beauty and quality of life.

These successes are highlighted in the third annual report on DNR's waterway and wetland permitting program. The report provides a picture of our performance in responding to customers' desires for their land while fulfilling the state's public trust duty.

We are committed to continuing to evaluate and improve our program and welcome feedback and new ideas from permit applicants as well as anglers, boaters and other users of Wisconsin's public waters.

DNR's waterway and wetland permit program plays a key role in shaping Wisconsin's future and keeping it a special place to live. Will we Wisconsinites and our visitors fish here or go to Canada? Will we boat Wisconsin rivers or go out West? Wisconsin's water resources seem vast, and we have made great strides in improving water quality – but the habitat along shorelines and in shallow water is limited, threatened – and in great demand.

This narrow band of habitat is nursery and home to fish and wildlife, a filter that protects water quality from runoff, and a screen that assures the privacy and scenic views that draw people to the water in the first place. This habitat also looks like the most convenient place to store boats and build patios. Balancing these needs and desires is very challenging and will remain so. But a look at our record in 2002 makes us confident that, with the help of our many partners, we can continue to protect Wisconsin's public waters, accommodate private property owners, and sustain the environment, economy and quality of life that make Wisconsin such a great place to live.

## 2004 – A Whole New System

This year, waterfront property owners, developers and consultants, local governments, boaters, anglers and other water users, adjusted along with DNR staff to a new system for ensuring that waterfront construction preserves fish and wildlife habitat, navigation routes, natural beauty and water quality. Waterfront property owners and developers can choose for themselves low impact design options with quick, predictable approvals – and those with questions can get quick answers using new request and general permit options.

On February 6, 2004, Wisconsin Act 118 took effect. Act 118 created a new three-tier system for projects in public waters. The new law made some construction activities exempt, directed the DNR to make rules creating statewide general permits for other activities, and set up a brand new process for any that don't fit the exemptions or general permits. In passing and signing the new law, Governor Doyle and legislative sponsors declared that the new law would maintain the same

level of protection for Wisconsin's lakes and streams while making permit decisions speedier and more consistent.

Setting up the new system has caused some to think there's a lot of new regulation. In reality, for at least 70 years agency permits have been required and in the early days of Statehood the legislature itself reviewed physical alterations to or structures in public waters (see our 2002 report to compare how permit decisions were previously made).

Act 118 made exemptions available for some projects except in high-value waters that the law calls "Areas of Special Natural Resource Interest," (see inset about special waters designations).

Previously nearly all physical alterations or structures in public waters required permits. The act allows DNR to make administrative rules about the design, location and installation practices for exempt activities – and says DNR will require a permit if, in a critical site, even a project meeting the standards would have significant adverse impacts on aquatic habitat, natural scenic beauty, water quality or navigation. DNR is required by Act 118 to make administrative rules setting up certain general permits – and may create general permits for other projects in public waters. General permits are created by rules setting design, location and installation practice standards. If a project meets these standards then it is automatically approved – unless at a critical site even a project meeting the standards would have significant adverse impacts on aquatic habitat, natural scenic beauty, water quality or navigation. Following exemption and general permit standards ensures not only quick review but also reduced impact.

Individual permits are needed in three different situations. First, you can choose to submit a non-standard design for individual review. Second, for the highest potential impact activities, like stream relocation, an individual review is required. Finally, individual review is required where in a critical site even a project meeting the standards would have significant adverse impacts on aquatic habitat, natural scenic beauty, water quality or navigation.

For all individual reviews, DNR responds in 30 days about whether the application is complete. After an application is complete, 30 days are allowed for public comment. A public informational hearing may be held. A DNR biologist review all of the information gathered about the aquatic habitat, natural scenic beauty, water quality or navigation at the project site and makes a permit decision based on whether these features will be harmed. In the majority of situations, project modifications are made to avoid impacts and projects can go ahead.

## Special Waters Designations

In creating exemptions, the new law named, "Areas of Special Natural Resource Interest (ASNRI)," where all projects would continue to require DNR review. A list of all waters that are areas of special natural resource interest (ASNRI) is available at <http://dnr.wi.gov/org/water/fhp/waterway/waterslist.shtml>.

The law designated some categories of waters as ASNRI and authorized DNR to name other waters as ASNRI. The rules carrying out the new law allow only the Natural Resources Board to name water categories as ASNRI by adopting a rule that is subject to legislative review. The law named outstanding and exceptional resource waters (identified in administrative code chapter NR102); trout streams, and waters in state natural areas as ASNRI. The Natural Resources Board

named four categories of waters as ASNRI: (1) waters with aquatic-dependent endangered, threatened or special concern species; (2) state or federal wild or scenic rivers; (3) wild rice waters managed with Wisconsin's sovereign tribes; and (4) Great Lakes tributary areas under special cooperative protection agreements. With appropriate notice including at the web site, individual waters determined to fit a category by pre-existing inventory processes are added to the master list. As an example, waters harboring species of special concern (rare and declining, but not yet designated as endangered or threatened) are ASNRI in order to avoid the higher cost and risk of bringing a species back from threatened or endangered conditions. Special concern species are identified through ongoing field surveys and an annual federal scientific review process. In 2004, no additional aquatic species of special concern were identified in Wisconsin.

Other waters designations are used under the new law: "priority navigable waters," determine whether state permits are needed for grading at the edge of lakes and streams; trout stream tributaries and portions of waters called, "public rights features," are used as location standards for some of the exemptions and general permits. "Public rights features" is the generic title for all the critical parameters that draw us to invest in waterfront property and spend our precious free time on the water – the plant bed where trophy walleye hide to hunt for food; the pine-cloaked windswept point. Some of these water designations are mapped already, and the long-term goal is mapping of all key physical features of Wisconsin's waters – or development of equivalent design or location parameters - so that the system is totally predictable. In the meantime the system relies on the first-hand knowledge and desire of property owners, anglers, boaters and others to preserve the aquatic habitat, natural scenic beauty, water quality and free navigation that make Wisconsin's waters so special.

### What's changed? What hasn't?

Wisconsin's Constitution declares that all navigable waters are "common highways and forever free." Waters that are navigable are public continue to be held in trust by the state for the benefit of its citizens. The definition of navigable waters is unchanged – those lakes and streams with enough water to float a recreational craft of the shallowest draft in common use on a recurring basis often enough to have a visible bed and banks. The new law is intended to protect the same public rights as previously water quality and quantity, all forms of active and passive navigation, fishing, hunting, boating, swimming, and natural scenic beauty. **All Wisconsin citizens have the right to boat, fish, hunt, ice skate, and swim on navigable waters, as well as enjoy the natural scenic beauty of navigable waters, and enjoy the quality and quantity of water that supports those uses.**

Wisconsin's Public Trust Doctrine requires the state government to actively work to protect public rights in the commercial or recreational use of public, navigable waters. The DNR, as the state agent charged with this day-to-day responsibility, does so through providing information about public waters and good management practices, through permit requirements for water projects, through supporting local administration of zoning ordinances that guide development along public waterways, and when necessary through court action to stop damage to public waters. This report focuses on DNR's waterway and wetland permit program as laid out in Chapters 30, 31 and 281 of the Wisconsin Statutes, the NR300 series of Wisconsin Administrative Codes, and an extensive body of common or court-made law.

The permit program protects all citizens' rights in public waters with the recognition that owners of lands bordering lakes and rivers – "riparian" owners – also hold rights to use the water next to

their property. These riparian rights include access to the water, protection of upland against erosion, reasonable diversion of the water, and building piers for navigation.

However, the Wisconsin State Supreme Court has consistently ruled that when conflicts occur between the rights of riparian owners and public rights, the public's rights are primary and the riparian owner's secondary. The court also has ruled that DNR staff, when they review projects that could impact Wisconsin lakes and rivers, must consider the cumulative impacts of individual projects occurring over time in their decisions.

DNR's waterway and wetland permitting staff work hard to strike this delicate balance. Sites of proposed projects are assessed for existing public rights (fish, wildlife, water quality and quantity, natural scenic beauty) and the likely changes as a result of the project. Staff uses natural resource inventories and scientific literature to make their assessments and projections. The statistics on the following pages document their success in protecting public waters and accommodating riparian rights and desires.

## **How fast can you get a permit decision?**

### ***Decisions for landowners are quick and predictable***

In 2004, half of all applications to alter Wisconsin's lakes and streams were able to follow streamlined procedures, with 41% eligible for a general permit and 10% exempted, under rules put in place by DNR to carry out 2003 Act 118.

Those applying to use the general permits got word in an average of 36 days whether they were eligible. The average landowner in 2004 received a decision in 43 days.

Applying for and receiving waterway and wetland permits sometimes takes longer than getting a hunting or kitchen remodeling permit because these decisions represent potentially-irreversible commitments of public water resources. Over time they determine the future of Wisconsin's fishing, hunting, and boating enjoyment, local tourism economies and waterfront property values.

## **Permit approval rate remains high**

### ***Process benefits lakes, streams and landowners***

Anyone choosing to use the standards for exemptions or general permits is in nearly all cases assured of a go-ahead. Before temporary rules were in place, DNR used the new law to recall (require a permit in lieu of exemption) in two situations. Both resulted from exemption determination requests for marina-type piers near diverse aquatic plant beds that had previously been limited by decisions of an administrative law judge. One general permit was elevated to an individual permit after the temporary rules went in to effect. While meeting the general permit conditions for installation and construction, a proposed new culvert was of inadequate size to allow fish access to spawning areas. While those choosing to or required to apply for individual permits waited several days longer in 2004 than in the previous two years, approval rates remained high because we work with people on project modifications that meet their needs - often saving time, money and hassles - while protecting lakes, streams and wetlands.

## Enforcement protects resources, is fair to those who follow the rules

In 2004, DNR visited randomly-selected sites where exemptions, general or individual decisions were issued. Compliance rates near 100% for exempt and general permit sites, indicating that the new rule standards are easy to follow.

## For the do-it-yourselfer

Wisconsin waterfront landowners want to do the right thing for their lake or stream. In the past, that was to call the DNR about construction plans. Today, using tools available on the internet or from DNR offices, anyone can select a reduced-impact design for common waterfront construction projects. Landowners or buyers can learn a lot about specific lakes and streams through knowing the waters designations or site features. For waters that aren't mapped, a simple form (exemption or general permit) will get an answer about individual sites.

## What's ahead for 2005?

### ***More People, More Uses of Public Waters – How Wisconsin Will Meet the Challenges***

Managing the situations where public and private rights meet has never been easy – and the challenges are growing. The major ways we intend to manage – and a few of our recent efforts - are described below.

- ◆ Maintain the extent of waters that are public - and the level of protection - in order to preserve our waterfront values, including fish and wildlife and the ecosystems that surround them.

Most, but not all, surface water in Wisconsin is public. No musky or merganser can tell the difference – they use and depend on all waters. On the other hand, for humans, good fences make good neighbors so boundaries are essential. To make it easier to preserve Wisconsin's waterfronts, DNR will continue to update and improve searchability of the data it has made available to carry out Act 118 – as well as improving instructions for using available data so that people can locate the boundaries of public waters and wetlands.

- ◆ Ensure the rights of all Wisconsin citizens to use and enjoy public waters. Listen to them and understand their views about how they use lakes, streams and wetlands.

Waterfront property owners, boaters of all types, anglers and hunters, resident and visitor alike, share our public waters. Our decisions must accommodate all citizens, local and statewide. In 2004, DNR held more than 20 hearings, spoke at over 100 meetings, to explain the new law and gather public input to the new rules. In 2005, DNR will invite representatives of development and real estate sectors, water user groups, property owners, conservationists, local governments and tribal leaders to join in evaluating the new system, culminating in a report to the Natural Resources Board and any necessary system adaptations.

- ◆ Consider the future and those who will follow.

The impacts of many small actions or waterfront projects may be difficult to see today – leading some to feel that regulation isn’t needed. But research clearly shows that losing shallow water habitat bit by bit is harming aquatic community stability and fish reproduction and growth. And the surface area of lakes and rivers in which boaters can boat and anglers can fish is actually shrinking, with consequences for all landowners and water users now and in the future. As part of its evaluation of the new public waters rules, DNR will examine whether the new system provides equal protection for public waters.

- ◆ Clarify standards and streamline procedures

Wisconsin Act 118 gave DNR’s long-standing efforts in this area a jump-start. In 2004, DNR staff developed perhaps the most extensive set of state rules ever, and certainly the fastest, with 12 rule chapters created or revised by emergency order in just three months. While previous efforts were slow because of deep conflicts between water interests, the requirements of the new law created incentives for all to be creative and flexible. Public hearings and intensive work groups filled the summer, leading to permanent rules adopted by the Natural Resources Board in early December. The rules now await legislative review prior to going into effect.

- ◆ Seek partnerships to save time and reduce duplication

New partnerships took a backseat to system redesign in 2004, but we expect the many new, precise standards will make it easier to combine permit review steps with additional willing local governments and with other agencies. Based on the new rules, we expect that early in 2005 DNR’s storm water and grading permits will combine to use a single application and deliver a single decision that address the full range of issues from water quality to fish and wildlife habitat and natural scenic beauty. We will continue working to spread partnerships to achieve one-stop decision making for all.

A Green Tier contract under development between Wisconsin DNR and the Wisconsin Builders Association will harness the efforts of government and trade association in a unified pull for a streamlined waterfront development process yielding superior environmental results. For more detail on the Green Tier concept, visit <http://dnr.wi.gov/org/caer/cea/environmental/>.

- ◆ Use technology to make DNR information and technical assistance easily available

With property owners’ taking on added responsibilities for conserving habitat, natural beauty and water quality at their sites under the new law, delivering information was of utmost importance to DNR in 2004. To carry out the new law, DNR delivered a wide variety of new information on its Waterway & Wetland web site. Beginning with the adoption of the temporary rules, DNR delivered maps and searchable lists of the waters with special designations, provided checklists for each exemption and general permit to help people tell whether their project would qualify, and keeps up-to-date hearing schedules and rule drafts available for those participating in the rule development process.

Property owners can now use a simple tool on the web site to diagnose the need for shore erosion control at their sites and shop for options that protect property while preserving fish and wildlife habitat. The same tool is used by DNR staff to make permit eligibility decisions. In the near future, similar tools will help people find the culvert size and installation adequate to allow fish to reach essential spawning grounds – and avoid culvert washouts.

In addition, the permit query system and on-line staff guidance stayed up-to-date for use of people researching property history, including navigability and ordinary high water mark data, and designing complex projects to avoid impacts.

Readily available information about water resources is critical to helping people avoid purchasing property that can't be used in the way they want – or that requires major alterations to address water issues. Public notices and other permit process steps will also occur over the Web.

## Organization & Staffing

Currently, 31 Water Management Specialists in DNR field stations annually work with an estimated 10,000 landowners - from major corporations to individuals - who consider waterway alterations – from building marinas to reshaping stream channels, from dredging harbors to building dams. The same specialists assist Wisconsin's 500 local governments with thousands of complex decisions each year under those governments' floodplain, shoreland and wetland ordinances. And finally, these specialists work with the owners of Wisconsin's 3,500 or so dams and assist with emergency response in dam breaks, floods and droughts. Five Regional Habitat Experts and five staff in Madison round out the program, by providing training and troubleshooting, data and budget systems, and similar tools for field staff, and developing standards and policy on emerging water uses and issues.

If you are involved in water projects, you will want to know the staff that serves your area. You can find contact information at:

<http://www.dnr.state.wi.us/org/water/fhp/waterway/watermanagementspecialists.shtml>